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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

DINA MISTRETТА,

Plaintiff and Appellant,

v.

MID-CENTURY INSURANCE COMPANY,

Defendant and Respondent.

C076339

(Super. Ct. No.
34201200136704CUBCGDS)

Appellant and insured Dina Mistretta appeals from the trial court's granting of respondent Mid-Century Insurance Company's motion for summary judgment against her on the ground that she, by signing a general release of all claims, had relinquished her right to pursue an action against the insurer for bad faith. Mistretta contends the trial court's ruling was in error because the release was limited to all claims: (1) being made under the applicable Uninsured Motorist insuring agreement, and (2) resulting from injuries or damages arising from the accident. She also argues that this release can be distinguished from the relevant authorities and that it preserves her bad faith claim. Mistretta argues in the alternative that summary judgment is inappropriate because, at a

minimum, there is a triable issue of fact regarding the scope of the release. We disagree. The language of the release unambiguously includes Mistretta's known bad faith claim and she has not proffered sufficient extrinsic evidence to create a triable issue of fact. We shall affirm the trial court's judgment.

I. BACKGROUND

In October 2009, Mistretta was injured in a motor vehicle accident at the intersection of Pacific Street and Rocklin Road in Rocklin, California. Mid-Century determined that the driver of the other vehicle was 100% at fault for the collision. The at-fault driver's insurance company paid Mistretta their insured's policy limits of \$25,000. Thereafter, Mistretta submitted an underinsured motorist claim to Mid-Century. In April 2010, Mistretta's attorney, Alex Gortinsky, informed Mid-Century that Mistretta had retained his law firm to represent her regarding the accident and her claim. In January 2011, Gortinsky demanded that Mid-Century pay Mistretta her policy limits, and then requested arbitration of her claim when Mid-Century did not accede to this demand. At least twice that year, Gortinsky informed Mid-Century that he was contemplating a bad faith lawsuit based in part on the insurer's delays.

On February 28, 2012, prior to the parties' scheduled arbitration date, Mistretta signed a release, titled "UM/UIM Trust Agreement and Release in Full," that provides: "FOR AND IN CONSIDERATION OF THE SUM OF Two hundred twenty-five thousand and no/100 (\$225,000.00), receipt of which is hereby acknowledged, the undersigned, DINA MISTRETTA & JERRY MISTRETTA in their capacity as the insured claimant, hereby releases, discharges . . . Mid-Century Insurance Company . . . from all rights, claims, demands and damages of any kind, resulting from injuries and/or damages arising from an accident that occurred on or about October 28, 2009, at or near Rocklin, CA and being made under the Uninsured Motorist insuring agreement of an automobile policy number 0184957516 issued by the insurer to Jerry Mistretta[.]

“AND FURTHER: In consideration of such payment the undersigned represents and warrants that this is a full and final release applying to all known claims, unknown and anticipated injuries, deaths or damages arising out of this accident, casualty or event.”

Pursuant to the release, by March 2012, Mid-Century paid Mistretta the policy limits of \$250,000 minus the \$25,000 she had already received from the at-fault driver’s insurance company.

On December 10, 2012, Mistretta filed a complaint alleging one cause of action—“Bad Faith Breach of Implied Covenant of Good Faith and Fair Dealing”—against Farmers Insurance Group. The complaint was later amended to name Mid-Century as a defendant, and Mistretta dismissed Farmers Insurance Group from the action. Mistretta alleges Mid-Century breached the implied covenant of good faith and fair dealing in her insurance contract. This allegation identifies and relies on language in her insurance policy that committed Mid-Century to pay “the difference, if any, between the amount recovered from the third party responsible for injury to their insured, up to the applicable policy limit.” She asserts that Mid-Century “offer[ed] unjustified low-ball settlement amounts,” improperly delayed settlement of her claim, and generally failed to consider her interests equal to Mid-Century’s interests, causing her to file for bankruptcy. Mid-Century subsequently moved for summary judgment on the ground that Mistretta had released all claims, including her bad faith claim, when she executed the release in exchange for \$225,000. The trial court granted Mid-Century’s motion and entered judgment in its favor. Mistretta timely appeals.

II. DISCUSSION

A. *Standard of Review*

“A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476; see also Code Civ. Proc., § 437c,

subd. (c).) A defendant moving for summary judgment “bears the burden of persuasion that ‘one or more elements of’ the ‘cause of action’ in question ‘cannot be established,’ or that ‘there is a complete defense’ thereto.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; see also Code Civ. Proc., § 437c, subd. (p)(2).) The defendant “bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact.” (*Aguilar v. Atlantic Richfield Co.*, *supra*, at p. 850.) Once the defendant meets its initial burden, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*Id.* at pp. 849-850.)

On appeal, we review the trial court’s decision de novo and view the evidence in a light favorable to Mistretta as the losing party. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767-769.)

B. The Release

Under *Edwards v. Comstock Insurance Co.* (1988) 205 Cal.App.3d 1164, 1166, 1169 (*Edwards*), a release of all claims is unambiguous and precludes a bad faith claim. The insureds in *Edwards* were injured in an automobile accident and presented a claim to their insurer under the uninsured motorist provisions of their policy. (*Id.* at p. 1166.) Later, the insureds filed a bad faith action against the insurer alleging that it acted according to a preconceived scheme to delay and underpay valid insurance claims. (*Ibid.*) The insurer filed a motion for summary judgment on the basis that the insureds, before filing their bad faith action, each accepted settlement payments and signed a “ ‘Release of All Claims’ in which they agreed to release respondents ‘from any and *all rights, claims, demands*, actions, causes of action *and damages of whatever kind whatsoever* including general, special, compensatory and punitive damages known or unknown, whether in contract, tort or otherwise *resulting from the loss* sustained by [the insureds] which occurred on or about May 2, 1984 at or near Los Angeles County, California.’ ” (*Ibid.*, italics added.) The releases also provided that the insureds “ ‘understand and agree that this Release extends to and includes any and all damages,

injuries, including, but not limited to emotional distress, and claims which were not anticipated, expected, known about or suspected to exist, or claims which exist and to any and all damages, injuries or claims which may develop in the future.’ ” (*Id.* at pp. 1166-1167.)

The insureds were represented by counsel and threatened to bring a bad faith action against their insurer prior to signing the release at issue. (*Edwards, supra*, 205 Cal.App.3d at p. 1168.) The court of appeal affirmed the trial court’s granting of the insurer’s motion for summary judgment: “Because appellants knew they had a claim for unfair practices against respondents, they had a duty to specifically exclude that claim from the release agreement. Otherwise, by releasing ‘all’ claims, appellants gave the misleading impression that they were abandoning their threatened bad faith action in return for respondents’ payment.” (*Id.* at p. 1169.) The court held that the language of the release was unambiguous and “[t]he only reasonable meaning of the release” was that it encompassed the insureds’ bad faith claim. (*Ibid.*)

Mistretta notes that the release in *Edwards* specified that it included punitive damages and tort causes of action, whereas her release did not. This distinction is not persuasive because, in its discussion, the appellate court in *Edwards* made no mention of this detail, relying instead on the fact that the insureds had released “all” claims. (*Edwards, supra*, 205 Cal.App.3d at p. 1167-1169.) Mistretta also claims that her release is distinguishable from the release in *Edwards* and does not apply to her bad faith action because her release is limited to: (1) claims being made under the Uninsured Motorist insuring agreement and (2) arising from the accident. Her arguments fail because her bad faith claim arises out of the accident and, as discussed below, was a known claim covered by the second paragraph of the release. Whether or not it was also “being made under” the Uninsured Motorist insuring agreement, and released by the first paragraph as well, does not undermine the clarity of the agreement.

1. *The First Paragraph of the Release*

Mistretta’s counsel conceded at oral argument that Mistretta’s bad faith claim is “related to” the insuring agreement. (See *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 818 [precise nature of duty of good faith and fair dealing “will depend on the contractual purposes”]; *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 573, 577 [insurer’s duty of good faith and fair dealing “sounds in both contract and tort,” and “arises from a contractual relationship existing between the parties”].) Without it, Mistretta would have no claim. (See Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2014) ¶ 12:822, p. 12C-5 [reviewing requirements for bad faith actions].) She argues that her bad faith claim is nonetheless not “being made under” the agreement, as described in the first paragraph of the release. We need not resolve this argument because the conjunctive language that begins the second paragraph of the release renders this point irrelevant.

2. *The Second Paragraph of the Release*

The second paragraph of Mistretta’s release does not contain any reference to the Uninsured Motorist insuring agreement. By its express terms, it is a separate, additional release of certain known claims: “*AND FURTHER*: In consideration of such payment the undersigned represents and warrants that this is a *full* and final release applying to *all known* claims, unknown and anticipated injuries, deaths or damages arising out of this accident, casualty or event.” (Italics added.) Even if we accepted them, nothing in Mistretta’s arguments about the first paragraph would make the two paragraphs contradictory. Neither the structure of the document nor the words of either paragraph suggests they are coextensive or otherwise dependent. Thus, our inquiry ends if we conclude, as we do, that Mistretta’s bad faith claim was released by the second paragraph. To do otherwise would require us to ignore the second paragraph, which purports to be a “further” release of known claims. This we cannot do: “Courts must interpret contractual language in a manner which gives force and effect to *every*

provision, and not in a way which renders some clauses nugatory, inoperative or meaningless.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473; see also Civ. Code, § 1641 [“The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other”].)

Accordingly, her bad faith claim was released by the second paragraph of the release because it is one “arising out of [the] accident.” (See *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1279 (*20th Century Ins. Co.*) [“A claim based on an insurer’s breach of the covenant of good faith and fair dealing that is *implied in every policy of insurance* is clearly within the plain meaning of the phrase ‘any insurance claim [for damages] arising out of’ ” the Northridge earthquake of 1994].)¹ Her assertion that her bad faith claim does not arise from the accident because it is a “separate tort action arising from Mid-Century’s handling of her claim, including the delays and unreasonable withholding of payments due under her policy” articulates its own demise. Without the accident, there would be no payments due under the policy and therefore no bad faith claim.² (See *Croskey et al.*, Cal. Practice Guide: Insurance Litigation, *supra*, ¶ 12:822, p. 12C-5 [bad faith claim requires plaintiff to show payments due under the policy].) Her bad faith claim must arise from the accident. (See *John Davler, Inc. v. Arch Ins. Co.* (2014) 229 Cal.App.4th 1025, 1035 [“ ‘ “California courts

¹ Similarly, Mistretta’s bad faith claim was also “resulting from injuries and/or damages arising from an accident” as described by the first paragraph.

² Likewise, the statement on the top of the signature page attached to the release that “**I UNDERSTAND THAT THIS IS ALL THE MONEY THAT WILL BE RECEIVED UNDER THE UNINSURED MOTORIST PORTION OF POLICY NUMBER JERRY MISTRETTA0184957516 FOR THE DAMAGES RESULTING FROM THIS ACCIDENT**” does not operate to limit Mistretta’s unambiguous release of “all” claims in the actual release.

have consistently given a broad interpretation to the terms ‘arising out of’ or ‘arising from’ in various kinds of insurance provisions. It is settled that this language does not import any particular standard of causation or theory of liability into an insurance policy. Rather, it broadly links a factual situation with the event creating liability, and connotes only a minimal causal connection or incidental relationship.” ’ [Citations.]”.)

Mistretta argues that *20th Century Insurance Co.* is inapplicable because it interprets a statute instead of a contract. We find no principled reason that the court’s determination that “the plain reading of” the phrase “any insurance claim [for damages] arising out of [a covered loss]” includes insurer bad faith claims is not equally applicable in this appeal.³ (*20th Century Ins. Co.*, *supra*, 90 Cal.App.4th at p. 1279.) Again, in order to establish a bad faith claim, Mistretta must establish that there was a covered loss. (See *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1151 [threshold requirement for establishing breach of implied covenant of good faith and fair dealing is “benefits due under the policy must have been withheld”].) As such, Mistretta’s bad faith claim is one “arising from” the accident. (See also *John Davler, Inc. v. Arch Ins. Co.*, *supra*, 229 Cal.App.4th at p. 1035.) Mistretta relies on an unpublished federal district court decision to support her limited construction of her release. California courts are not bound by decisions of the lower federal courts. (*People v. Linton* (2013) 56 Cal.4th 1146, 1182, fn. 8.)⁴ We are, however, bound to apply “the long-established general rule

³ We are not persuaded by Mistretta’s argument that public policy considerations in *20th Century Insurance Co.* render it inapplicable. The court held that “the express language of the statute applies not only to contract damage claims, but also to tort claims for insurer bad faith (i.e., a breach of the implied covenant of good faith and fair dealing)” before explaining that the legislative history of the statute also led to the same result: “Moreover, the plain reading of the statute’s words comports with the legislative intent in enacting this law.” (*20th Century Ins. Co.*, *supra*, 90 Cal.App.4th at p. 1279.)

⁴ Moreover, the decision cited by Mistretta is distinguishable. In *Burton v. Lumbermans Mutual Casualty Company* (N.D.Cal. Nov. 15, 2004, No. C04-01614 HRL) 2004 U.S.

that—in the absence of fraud, deception, or similar abuse—a release of ‘ “all claims” ’ [citations] covers claims that are not expressly enumerated in the release.” (*Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 305.) Here, Mistretta did not expressly reserve her bad faith claim. Accordingly, it has not been preserved. (See *Croskey et al.*, Cal. Practice Guide: Insurance Litigation, *supra*, ¶ 12:1285, p. 12D-33 [“If the insured wishes to pursue a bad faith claim after settling with the insurer, it is the insured’s duty to *expressly reserve* it”].)

3. *Alleged Ambiguity and Extrinsic Evidence*

Mistretta argues in the alternative that summary judgment is inappropriate because there is a triable issue of fact regarding the scope of the release. The authorities cited by Mistretta are distinguishable because they involve releases that are reasonably susceptible to the alternate interpretations advanced by the plaintiffs. In *Epic Communications, Inc. v. Richwave Technology, Inc.* (2015) 237 Cal.App.4th 1342, 1349, the appellate court held that “several clauses of the contract manifest a contrary intention, making the agreement as a whole not only reasonably, but highly susceptible to an interpretation in which the release did not operate in favor of [defendants].” Likewise, in *Solis v. Kirkwood Resort Co.* (2001) 94 Cal.App.4th 354, 363, 364, the language of the release in the plaintiff’s midweek season pass, which was “only valid Monday through Friday,” did not preclude his argument that the release also applied Monday through Friday and not when he purchased a day pass to ski on the weekend. Here, because it expressly states an additional category of claims that are released, the second paragraph of Mistretta’s release is not ambiguous and is not contradicted by her argument that a bad faith claim is

Dist. LEXIS 23609, at page 11, the federal district court held that *Edwards* did not apply because the definition of the “claims” to be released was limited to “all claims or demands for underinsured motorist benefits under [the policy] . . . to recover for damages Releasor alleges he suffered *in* the motor vehicle accident that occurred on May 22, 1999.” (*Italics added.*) Here, Mistretta’s release is not limited to claims for damages suffered *in* the motor vehicle accident.

outside the scope of the first paragraph. As discussed previously, the language of the release unambiguously bars Mistretta's known bad faith claim as a matter of law.

Nonetheless, our Supreme Court has noted that, despite the general rule that a release of all claims is unambiguous, "extrinsic evidence might establish that the release refers only to all claims *of a particular type*, and consideration of extrinsic evidence would be appropriate where—as here—the parties know of a particular claim but do not refer to it expressly in their release." (*Jefferson v. Department of Youth Authority, supra*, 28 Cal.4th at p. 305.) The trial court correctly ruled that Mistretta's extrinsic evidence regarding her and her attorney's undisclosed understanding of the scope of the release is inadmissible. (See *Edwards, supra*, 205 Cal.App.3d at p. 1169 ["[P]arol evidence of the Edwards' undisclosed intention to retain the right to sue their insurer is inadmissible to contradict a release in which the Edwards unambiguously relinquish their right to pursue *all* claims, actions and causes of action related to the May 1984 automobile accident"].) Mistretta also proffered evidence that on February 12, 2012, Mid-Century internally assigned a \$225,304-288,304 value to her underinsured motorist claim. Mistretta suggests that we make an illogical leap from the fact that her claim settled for an amount greater than what Mid-Century had previously found reasonable to conclude the parties did not intend to also release her bad faith claim. We find this argument too attenuated to create a triable issue. The evidence of how Mid-Century valued Mistretta's claim was not disclosed until after she initiated her bad faith lawsuit, and there is no evidence of the value Mid-Century placed, if any, on Mistretta's bad faith claim. Incomplete and undisclosed information about the value of the bargain Mid-Century negotiated is insufficient to create a triable issue regarding whether the parties actually agreed to release Mistretta's bad faith claim as well as her underinsured motorist claim. Mistretta has not identified extrinsic evidence sufficient to create a triable issue regarding the scope of the release: "The only reasonable meaning of the release in this case is that it encompasses [the insured's] presettlement claims of bad faith and unfair practice as well

as [the insured's] presettlement claims for damages resulting from the automobile accident.” (*Edwards v. Comstock Ins. Co.*, *supra*, at p. 1169.)

III. DISPOSITION

The judgment is affirmed. Mid-Century shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/
RENNER, J.

We concur:

/s/
HULL, Acting P. J.

/s/
MURRAY, J.